

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	

**COMMENTS OF
NORTH DAKOTA PUBLIC SERVICE COMMISSION
ON
FURTHER NOTICE OF PROPOSED RULEMAKING**

The following comments are respectfully submitted by the undersigned commissioners of the North Dakota Public Service Commission (NDPSC) in the above referenced docket concerning reform of the regime governing intercarrier compensation. The NDPSC is a constitutional agency of the State of North Dakota. The commission consists of three statewide elected commissioners responsible for various levels of regulatory oversight over a number of industries within the state, telecommunications being one of them.

The issues raised in this matter are of particular importance to the State of North Dakota. In many ways, North Dakota is a case study in the challenges presented to policy makers seeking to reform the complex rules that govern intercarrier compensation. In North Dakota, all of the issues that are identified as the “rural challenge” are magnified by the demographic and geographic realities of our state. While high-cost rural carrier lines may only be a small percentage of the total number of national access lines, they constitute upwards of 40 percent of the lines within our state. North Dakota has a population of approximately 650,000, is 70,000 square miles in size, and over 95 percent of that land mass is served by rural incumbent local exchange companies. Put another way, the less than five percent of the state’s geography served by our non-rural ILEC, Qwest, constitutes better than half of the access lines in the state. This means a relatively small number of people are left to support the expensive networks required to serve a geographically large and widely dispersed population.

Fortunately, policy makers have long made universal service a cornerstone of this nation’s telecommunications policy. Barring this support, rural consumers would be faced with limited telecommunications deployment at extraordinary expense. But because of universal service, rural Americans have enjoyed relatively similar access as their urban peers to the

infrastructure that is critical to health, public safety, economic survival and quality of life. As the FCC clearly understands as indicated in the notice issued in this docket, the regime that has provided these advances for rural America is crumbling. North Dakota is on the bleeding edge of this problem.

Our rural carriers have long been dependent on access charges for the cost recovery of their networks. For many, access charges make up over 50 percent of their revenues, and intrastate access is a large part of that. Additionally, there exist disparities between interstate and intrastate access rates, with all the attendant arbitrage opportunities that the FCC understands so well. North Dakota's political leadership has attempted to address this disparity on a number of occasions, but the problems of reforming intrastate access are as intractable on the state level as those on the federal. The NDPSC has only those powers granted to it by the legislature, and creation of a state universal service fund is still within the purview of the legislature rather than the NDPSC. In addition, while the NDPSC does have regulatory jurisdiction over intrastate access rates, it does not have retail rate regulation over nearly all rural ILECs in the state (by virtue of their status as cooperatives and small independents). In many ways, the state's inability to lower intrastate access is directly correlated with the federal government's aggressive reduction in interstate rates. Consumer-voters see large increases in the federal SLC and USF charges and they have little stomach for any action on the state level that would add yet another line item to their bills. Additionally, North Dakota's small population almost ensures that any statewide assessment would have to be substantial to make any meaningful reduction in intrastate access. Finally, in today's marketplace, consumer-voters are less than enamored with the argument that higher retail rates will be offset with lower long distance rates. Ironically, the very arbitrage opportunities created by intercarrier compensation rules have encouraged consumers to utilize wireless phones as a substitution for traditional toll calls. Increasingly, VOIP will offer similar incentives to consumers. This is all part of the vicious cycle the FCC has described persuasively in this docket.

So what is to be done about it? While some have advocated a bill and keep regime, or something close to it by virtue of a zero rate for access, we reject that as a viable option for rural America. As has been calculated by supporters of a number of the reform plans, the cost shifts necessary to implement such a change in how we fund rural networks make such proposals a non-starter. In addition, the preservation of some form of access makes sound economic sense. Bill and keep may work perfectly well for carriers exchanging similar volumes of traffic. But this is not the case with many rural carriers. It is difficult to contemplate how we can expect to encourage investment in rural networks if a connecting carrier is simply

allowed free use of the ILEC facility. At the same time, the NDPSC readily acknowledges that the current regime is not just unworkable into the future, it is detrimental to the orderly and efficient deployment of telecommunications infrastructure throughout the nation.

It is with this background that we endorse the intercarrier compensation principles laid out by the National Association of Regulatory Utilities Commissioners as an excellent framework for the FCC to adopt in analyzing the various proposals submitted in this docket. We also recommend the FCC give serious consideration to the proposals submitted by the NARUC Intercarrier Compensation Task Force, and the rural coalitions referred to as the EPG and ARIC. Because of the evolving nature of these plans, we will reserve specific judgment and comment until later in the reply comment cycle. As with any compromise plan, none of these will satisfy everyone, but we nonetheless commend these groups for their willingness to engage wholeheartedly in this process, and to offer ideas that at least attempt to address the key concerns of the NDPSC. Namely, that any plan:

- unify intercarrier compensation rates between carriers and jurisdictions to the greatest degree possible
- preserve some form of access charge regime when traffic rides over the PSTN, albeit it at a reduced level
- recognize that all carriers utilizing the PSTN bear some responsibility for the cost of that network
- acknowledge the special challenges faced by carriers of all types in rural areas by assisting them in recovering revenues lost due to access reduction and unification
- proactively address enforcement and arbitration of issues related to interconnection and emerging areas of concern like “phantom traffic”
- be legally sustainable under today’s statutory framework
- adopt certain default rules that mitigate opportunities for the exercise of market power when networks interconnect, while allowing for mutually agreeable contracts by negotiation where possible
- concurrently address the looming crisis facing the universal service fund
- allow for some transition period that gives states and industry time to incorporate the changes in an orderly manner

We commend the FCC, the chairman and commissioners for tackling this issue head on. We urge you to focus great energy on this topic, and to bring resolution to it as quickly as practicable. We view it as the most important issue facing telecommunications today, because so many other issues are dependent on getting this one answered correctly. We look forward to future

dialogue on this issue that is so important to the nation's consumers generally, and to North Dakota specifically.

Respectfully submitted,

NORTH DAKOTA PUBLIC SERVICE COMMISSION

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